

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by 1st submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Due to time restraints, the Secretary of State's Office will no longer edit the text of proposed rules. We will continue to make numbering and labeling changes as necessary.

Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

NOTICE OF PROPOSED RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 19. OFFICE OF ADMINISTRATIVE HEARINGS

PREAMBLE

1. Section Affected

Article 1
R2-19-101
R2-19-102
R2-19-103
R2-19-104
R2-19-105
R2-19-106
R2-19-107
R2-19-108
R2-19-109
R2-19-110
R2-19-111
R2-19-112
R2-19-113
R2-19-114
R2-19-115
R2-19-116
R2-19-117
R2-19-118
R2-19-119
R2-19-120
R2-19-121
R2-19-122

Rule Making Action

New Article
New Section
New Section
New Section
New Section
New Section
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New Section
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2. The specific statutory authority for the rule making, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. § 41-1092.01(C)(4); A.R.S. § 41-1092.02(B)

Implementing statutes: A.R.S. § 41-1092 - A.R.S. § 41-1092.11; A.R.S. § 12-904; A.R.S. § 12-909

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 2 A.A.R. 1662, June 13, 1997

Notice of Rulemaking Docket Opening: 4 A.A.R. 2628, September 18, 1998

4. The name and address of agency personnel with whom persons may communicate regarding the rules:

Name: Cliff J. Vanell

Address: 1700 West Washington, Suite 602
Phoenix, Arizona 85007

Telephone: (602) 542-9826

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Fax: (602) 542-9827

5. **An explanation of the rule, including the agency's reasons for initiating the rule:**
The rules will provide a single source of procedural requirements governing hearing practice before the Office of Administrative Hearings. Currently parties must seek guidance from the rules of each regulatory agency.
6. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable
7. **The preliminary summary of the economic, small business, and consumer impact:**
The proposed rules codify existing practice before the Office of Administrative Hearings (OAH) which has been based on existing rules governing administrative hearings before the creation of the OAH. The proposed rules will therefore have a positive impact by allowing parties to access a single source of procedural requirements. Represented parties will save money currently billed to research disparate rules. Unrepresented parties will save time in telephoning or writing for guidance and will be more able to effectively represent themselves before the office.
8. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**
Name: Cliff J. Vanell
Address: 1700 West Washington, Suite 602
Phoenix, Arizona 85007
Telephone: (602) 542-9826
Fax: (602) 542-9827
9. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rules or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**
An oral proceeding has been scheduled as follows:
Date: October 19, 1998
Time: 9 a.m.
Location: 1700 West Washington, Suite 602
Phoenix, Arizona 85007
Nature: Public comment hearing at which the public may appear and make comments regarding the rules and the economic, small business and consumer impact statement. The Office will accept written comments until the close of the record which will not be before October 19, 1998.
10. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
None.
11. **Incorporations by reference and their location in the rules:**
None.
12. **The full text of the rules follows:**

TITLE 2. ADMINISTRATION

CHAPTER 19. OFFICE OF ADMINISTRATIVE HEARINGS

**ARTICLE 1. PREHEARING AND HEARING
PROCEDURES**

Section		
<u>R2-19-101.</u>	<u>Definitions</u>	<u>R2-19-111.</u> <u>a Hearing</u>
<u>R2-19-102.</u>	<u>Applicability</u>	<u>R2-19-112.</u> <u>Vacating a Hearing</u>
<u>R2-19-103.</u>	<u>Request for Hearing</u>	<u>R2-19-113.</u> <u>Prehearing Conference</u>
<u>R2-19-104.</u>	<u>Assignment of Administrative Law Judge: Setting the Hearing</u>	<u>R2-19-114.</u> <u>Subpoenas</u>
<u>R2-19-105.</u>	<u>Ex Parte Communications</u>	<u>R2-19-115.</u> <u>Telephonic Testimony</u>
<u>R2-19-106.</u>	<u>Motions</u>	<u>R2-19-116.</u> <u>Rights and Responsibilities of Parties</u>
<u>R2-19-107.</u>	<u>Computing Time</u>	<u>R2-19-117.</u> <u>Conduct of Hearing</u>
<u>R2-19-108.</u>	<u>Filing Documents</u>	<u>R2-19-118.</u> <u>Failure of Party to Appear for Hearing</u>
<u>R2-19-109.</u>	<u>Consolidation or Severance of Matters</u>	<u>R2-19-119.</u> <u>Witnesses; Exclusion from Hearing</u>
<u>R2-19-110.</u>	<u>Continuing or Expediting a Hearing; Reconvening</u>	<u>R2-19-120.</u> <u>Proof</u>
		<u>R2-19-121.</u> <u>Disruptions</u>
		<u>R2-19-122.</u> <u>Hearing Record</u>
		<u>Notice of Judicial Appeal: Transmitting the Transcript</u>

**ARTICLE I. PREHEARING AND HEARING
PROCEDURES**

R2-19-101. Definitions

The following definitions apply unless otherwise stated:

1. "Agency" means the department, board, or commission from which a matter originates.
2. "Matter" means a contested case or appealable agency action.

R2-19-102. Applicability

- A. These rules apply to any matter heard by the Office of Administrative Hearings.
- B. An administrative law judge may waive the application of any of these rules to further administrative convenience, expedition, and economy if:
 1. The waiver does not conflict with law, and
 2. The waiver does not cause undue prejudice to any party.
- C. If a procedure is not provided by statute or these rules, an administrative law judge may issue an order using the Arizona Rules of Civil Procedure and related local rules for guidance.

R2-19-103. Request for Hearing

- A. An agency requesting the Office schedule an administrative hearing shall provide the following information on a form provided by the Office:
 1. Caption of the matter, including the names of the parties;
 2. Agency matter number;
 3. Identification of the matter as a contested case or appealable agency action;
 4. In an appealable agency action, the date the party appealed the agency action;
 5. Estimated time for the hearing;
 6. Proposed hearing dates;
 7. Any request to expedite or consolidate the matter; and
 8. Any agreement of the parties to waive applicable time limits to set the hearing.
- B. The Office may require the agency to supply information regarding the nature of the proceeding, including the specific allegations.

R2-19-104. Assignment of Administrative Law Judge: Setting the Hearing

- A. Within 7 days of the Office's receipt of a request for hearing, the Office shall provide the agency in writing with:
 1. The name of the administrative law judge assigned to hear the matter;
 2. The date, time, and location of the hearing; and
 3. The docket number assigned by the Office.

R2-19-105. Ex Parte Communications

A party shall not communicate, either directly or indirectly, with the administrative law judge about any substantive issue in a pending matter unless:

1. All parties are present;
2. It is during a scheduled proceeding, where an absent party fails to appear after proper notice; or
3. It is by written motion with copies to all parties.

R2-19-106. Motions

- A. **Purpose.** A party requesting a ruling from an administrative law judge shall file a motion. Motions may be made for rulings such as:
 1. Consolidation or severance of matters pursuant to R2-19-109;

2. Continuing or expediting a hearing pursuant to R2-19-110;
3. Vacating a hearing pursuant to R2-19-111;
4. Prehearing conference pursuant to R2-19-112;
5. Quashing a subpoena pursuant to R2-19-113;
6. Telephonic testimony pursuant to R2-19-114; and
7. Reconsideration of a previous order pursuant to R2-19-115.

- B. **Form.** Unless made during a prehearing conference or hearing, motions shall be made in writing and shall conform to the requirements of R2-19-108. All motions, whether written or oral, shall state the factual and legal grounds supporting the motion, and the requested action.

- C. **Time Limits.** Absent good cause, or unless otherwise provided by law or these rules, written motions shall be filed with the Office at least 15 days before the hearing. A party demonstrates good cause by showing that the grounds for the motion could not have been known in time, using reasonable diligence and:

1. A ruling on the motion will further administrative convenience, expedition or economy; or
2. A ruling on the motion will avoid undue prejudice to any party.

- D. **Response to Motion.** A party shall file a written response stating any objection to the motion within 5 days of service, or as directed by the administrative law judge.

- E. **Oral Argument.** A party may request oral argument when filing a motion or response. The administrative law judge may grant oral argument if it is necessary to develop a complete record.

- F. **Rulings.** Rulings on motions, other than those made during a prehearing conference or the hearing, shall be in writing and served on all parties.

R2-19-107. Computing Time

- A. In computing any time period, the Office shall exclude the day from which the designated time period begins to run. The Office shall include the last day of the period unless it falls on a Saturday, Sunday, or legal holiday. When the time period is 10 days or less, the Office shall exclude Saturdays, Sundays, and legal holidays.
- B. When service of a document is made by mail, 5 days shall be added to the time period.

R2-19-108. Filing Documents

- A. **Docket.** The Office shall open a docket for each matter upon receipt of a request for hearing. All documents filed in a matter with the Office shall be date stamped on the day received by the Office and entered in the docket.
- B. **Definition.** "Documents" include papers such as complaints, answers, motions, responses, notices, and briefs.
- C. **Form.** A party shall state on the document the name and address of each party served and how service was made pursuant to subsection E. A document shall contain the agency's caption and the Office's docket number.
- D. **Signature.** A document filed with the Office shall be signed by the party or the party's attorney. A signature constitutes a certification that the signer has read the document, has a good faith basis for submission of the document, and that it is not filed for the purpose of delay or harassment.
- E. **Service.** A copy of a document filed with the Office shall be served on all parties. Service shall be completed by personal delivery; first-class, certified or express mail; or facsimile.

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- F. Date of Filing.** A document is filed with the Office on the date it is received by the Office, as established by the Office's date stamp on the face of the document.

R2-19-109. Consolidation or Severance of Matters

- A. Standards for consolidation.** An administrative law judge may order consolidation of pending matters, if:
1. There are substantially similar factual or legal issues, or
 2. All parties are the same.
- B. Determination.** When different administrative law judges are assigned to the matters that are the subject of the motion for consolidation, the motion shall be filed with the administrative law judge assigned to the matter with the earliest pending hearing date.
- C. Order.** The administrative law judge shall send a written ruling granting or denying consolidation to all parties, identifying the cases, the reasons for the decision, and notification of any consolidated prehearing conference or consolidated hearing. The administrative law judge shall designate the controlling docket number and caption to be used on all future documents.
- D. Severance.** The administrative law judge may sever consolidated matters to further administrative convenience, expedition, and economy, or to avoid undue prejudice. Severance may be ordered upon the administrative law judge's own review, or a party's motion.

R2-19-110. Continuing or Expediting a Hearing; Reconvening a Hearing.

- A. Continuing or Expediting a Hearing.** When ruling on a motion to continue or expedite, the administrative law judge shall consider such factors as:
1. The time remaining between the filing of the motion and the hearing date;
 2. The position of other parties;
 3. The reasons for expediting the hearing or for the unavailability of the party, representative, or counsel on the date of the scheduled hearing;
 4. Whether testimony of an unavailable witness can be taken telephonically or by deposition; and
 5. The status of settlement negotiations.
- B. Reconvening a Hearing.** The administrative law judge may recess a hearing and reconvene at a future date by a verbal ruling.

R2-19-111. Vacating a Hearing

An administrative law judge shall vacate a calendared hearing and return the matter to the agency for further action, if:

1. The parties agree to vacate the hearing;
2. The agency dismisses the matter;
3. The non-agency party withdraws the appeal; or
4. Facts demonstrate to the administrative law judge that it is appropriate to vacate the hearing.

R2-19-112. Prehearing Conference

- A. Procedure.** Upon motion of a party, or on the administrative law judge's own review, the administrative law judge may hold a prehearing conference. The conference may be held telephonically. The administrative law judge may issue a prehearing order outlining the issues to be discussed.
- B. Record.** The administrative law judge may record any agreements reached during a prehearing conference by electronic or mechanical means, or memorialize them in an order.

R2-19-113. Subpoenas

- A. Form.** A party shall request a subpoena in writing from the administrative law judge and shall include:

1. The caption and docket number of the matter;
2. A brief statement demonstrating the relevance of the testimony or evidence sought;
3. A list or description of any documents sought;
4. The full name and home or business address of the custodian of the documents sought or all persons to be subpoenaed;
5. The date, time, and place to appear or to produce documents pursuant to the subpoena; and
6. The name, address, and telephone number of the party, or the party's attorney, requesting the subpoena.

- B. Service of Subpoena.** Any person who is not a party and is at least eighteen years of age may serve a subpoena. The person shall serve the subpoena by delivering a copy to the person to be served. The person serving the subpoena shall provide proof of service by filing with the office a certified statement of the date and manner of service and the names of the persons served.

- C. Objection to Subpoena.** A party, or the person served with a subpoena who objects to the subpoena, or any portion of it, may file an objection with the administrative law judge. The objection shall be filed within 5 days after service of the subpoena, or at the outset of the hearing if the subpoena is served fewer than 5 days before the hearing.

- D. Quashing, Modifying Subpoenas.** The administrative law judge shall quash or modify the subpoena if:
1. It is unreasonable or oppressive, or
 2. The desired testimony or evidence may be obtained by an alternative method.

R2-19-114. Telephonic Testimony

The administrative law judge may grant a motion for telephonic testimony if:

1. Personal attendance by a party or witness at the hearing will present an undue hardship for the party or witness;
2. Telephonic testimony will not cause undue prejudice to any party; and
3. The proponent of the telephonic testimony pays for any cost of obtaining the testimony telephonically.

R2-19-115. Rights and Responsibilities of Parties

- A. Generally.** A party may present testimony and documentary evidence and argument with respect to the issues and may examine and cross-examine witnesses.
- B. Preparation.** A party shall have all witnesses, documents and exhibits available on the date of the hearing.
- C. Exhibits.** A party shall provide a copy of each exhibit to all other parties at the time the exhibit is offered to the administrative law judge, unless it was previously provided through discovery.
- D. Responding to Orders.** A party shall comply with an order issued by the administrative law judge concerning the conduct of a hearing. Unless objection is made orally during a pre-hearing conference or hearing, a party shall file a motion requesting the administrative law judge to reconsider the order.

R2-19-116. Conduct of Hearing

- A. Public access.** Unless otherwise provided by law, all hearings are open to the public.
- B. Opening.** The administrative law judge shall begin the hearing by reading the caption, stating the nature and scope of the hearing, and identifying the parties, counsel, and witnesses for the record.
- C. Stipulations.** The administrative law judge shall enter into the record any stipulation, settlement agreement, or consent

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order entered into by any of the parties before or during the hearing.

- D. Opening Statements.** The party with the burden of proof may make an opening statement at the beginning of a hearing. All other parties may make statements in a sequence determined by the administrative law judge.
- E. Order of presentation.** After opening statements, the party with the burden of proof shall begin the presentation of evidence, unless the parties agree otherwise or the administrative law judge determines that requiring another party to proceed first would be more expeditious or appropriate, and would not prejudice any other party.
- F. Examination.** A party shall conduct direct and cross examination of witnesses in the order and manner determined by the administrative law judge to expedite and ensure a fair hearing. The administrative law judge shall make rulings necessary to prevent argumentative, repetitive, or irrelevant questioning and to expedite the examination to the extent consistent with the disclosure of all relevant testimony and information.
- G. Closing argument.** When all evidence has been received, parties shall have the opportunity to present closing oral argument in a sequence determined by the administrative law judge. The administrative law judge may permit or require closing oral argument to be supplemented by written memoranda. The administrative law judge may permit or require written memoranda to be submitted simultaneously or sequentially, within time periods the administrative law judge may prescribe.
- H. Conclusion of hearing.** Unless otherwise provided by the administrative law judge, the hearing is concluded upon the submission of all evidence, the making of final argument, or the submission of all post hearing memoranda, whichever occurs last.

R2-19-117. Failure of Party to Appear for Hearing

If a party fails to appear at a hearing, the administrative law judge may proceed with the presentation of the evidence of the appearing party, or vacate the hearing and remand the matter to the agency for any further action.

R2-19-118. Witnesses: Exclusion from Hearing

All witnesses at the hearing shall testify under oath or affirmation. At the request of a party, or at the discretion of the administrative law judge, the administrative law judge may exclude witnesses who are not parties from the hearing room so that they cannot hear the testimony of other witnesses.

R2-19-119. Proof

- A. Standard of proof.** Unless otherwise provided by law, the standard of proof is a preponderance of the evidence.
- B. Burden of Proof.** Unless otherwise provided by law:
1. The party asserting a claim, right, or entitlement has the burden of proof;
 2. A party asserting an affirmative defense has the burden of establishing the affirmative defense; and
 3. The proponent of a motion shall establish the grounds to support the motion.

R2-19-120. Disruptions

A person shall not interfere with access to or from the hearing room, or interfere, or threaten interference with the hearing. If a person interferes, threatens interference, or disrupts the hearing, the administrative law judge may order the disruptive person to leave or be removed.

R2-19-121. Hearing Record

- A. Maintenance.** The Office shall maintain the official record of a matter.
- B. Transfer of record.** Before an agency takes final action, the agency may request that the record be available for its review or duplication. Any party requesting a copy of the record or any portion of the record shall make a request to the Office and shall pay the reasonable costs of duplication.
- C. Release of exhibits.** Exhibits shall be released:
1. Upon the order of a court of competent jurisdiction; or
 2. Upon motion of the party who submitted the exhibits if the time for judicial appeal has expired and no appeal is pending.

R2-19-122. Notice of Judicial Appeal: Transmitting the Transcript

- A. Notification to the Office.** Within 10 days of filing a complaint for judicial review of an agency action resulting from an administrative hearing before the Office, the party shall file a copy of the complaint with the Office. The Office shall then transmit the record to the Superior Court.
- B. Transcript.** A party requesting a transcript shall arrange for transcription at the party's expense. The Office shall make a copy of its audio taped record available to the transcriber. The party arranging for transcription shall deliver the transcript, certified by the transcriber under oath to be a true and accurate transcription of the audio taped record, to the Office, together with one unbound copy.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 10. DEPARTMENT OF HEALTH SERVICES HEALTH CARE INSTITUTIONS: LICENSURE

PREAMBLE

- | | |
|--|--|
| <p>1. <u>Sections Affected</u>
R9-10-103</p> <p>2. <u>The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):</u>
Authorizing statutes: A.R.S. §§ 36-132(A) and 36-136(F)
Implementing statute: A.R.S. § 36-405(C)</p> | <p><u>Rulemaking Action</u>
New Section</p> |
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3. A list of all previous notices appearing in the Register addressing the proposed rules:

Notice of Rulemaking Docket Opening: 4 A.A.R. 2551, September 11, 1998

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Kathleen Phillips, Rules Administrator

Address: Department of Health Services
1740 West Adams, Suite 410
Phoenix, Arizona 85007

Phone: (602) 542-1264

Fax: (602) 542-1289

or

Name: Valerie Grina

Address: Assurance and Licensure Services
1647 East Morten, Suite 180
Phoenix, Arizona 85020

Phone: (602) 674-4349

Fax: (602) 861-0491

5. An explanation of the rule, including the agency's reasons for initiating the rule:

A.R.S. § 36-136 (F) provides the general authority for the Department to make and amend rules. A.R.S. § 36-405 (C) provides specific authorization for the Department to establish and collect nonrefundable application fees, architectural drawing review fees, and annual license fees. The proposed rule will establish the authorized fees.

The Department did not rely on any study to evaluate or justify the proposed rule.

6. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

7. The preliminary summary of the economic, small business, and consumer impact:

A.R.S. § 36-405 (C) authorizes the establishment and collection of license application fees, architectural drawing review fees, and annual license fees. The nonrefundable license application fee of \$50 will have a minimal economic impact on health care institutions. Because the Department is currently collecting architectural drawing review fees with a maximum fee of \$150 for a project costing \$500,000 or more, the proposed rules will not increase costs for architectural drawing reviews.

Annual license fees will range from \$100 for a health care institution with no beds, i.e. a home health agency or an outpatient treatment center, to \$500 plus an additional \$10 per bed for a health care institution with 150 inpatient beds or more, i.e. a hospital or a residential care institution. Under the fee structure in the proposed rules, the annual license fees for the largest health care institution (562 beds) currently licensed by the Department will be \$6120.

The Department will experience increased costs for collecting and processing the fees and maintaining fee database and file information.

8. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Kathleen Phillips, Rules Administrator

Address: Department of Health Services
1740 W. Adams, Suite 410
Phoenix, Arizona 85007

Phone: (602) 542-1264

Fax: (602) 542-1289

or

Name: Valerie Grina

Address: Assurance and Licensure Services
1647 E. Morten, Suite 180
Phoenix, Arizona 85020

Phone: (602) 674-4349

Fax: (602) 861-0491

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9. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

A person may submit written comments on the proposed rules or economic impact statement by submitting the comments to the persons specified in paragraph 4 no later than the close of record, which is scheduled for Friday, October 23, 1998, at 5 p.m. The Department has scheduled the following oral proceedings:

Date: October 20, 1998

Time: 10 a.m.

Location: Tucson Public Library - Main Branch
101 N. Stone, Lower Level Meeting Room
Tucson, Arizona 85701

Date: October 21, 1998

Time: 9 a.m.

Location: 1647 E. Morten Avenue, Training Room
Phoenix, Arizona 85020

Date: October 23, 1998

Time: 10 a.m.

Location: Yavapai County Health Department
930 Division Street, Conference Room A-B
Prescott, Arizona 86301

10. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None.

11. Incorporations by reference and their locations in the rules:

None.

12. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 10. DEPARTMENT OF HEALTH SERVICES HEALTH CARE INSTITUTIONS: LICENSURE

ARTICLE 1. GENERAL

Section

R9-10-103. Licensure Fees

ARTICLE 1. GENERAL

R9-10-103. Licensure Fees

A. A governing authority applying for a health care institution license shall submit a nonrefundable application fee of \$50 with an initial or renewal license application.

B. A governing authority submitting architectural drawings to build a new or modify a licensed health care institution shall submit an architectural drawing review fee as follows:

1. Fifty dollars for a project with a cost of less than \$100,000;
2. One hundred dollars for a project with a cost of \$100,000 or more and less than \$500,000; or
3. One hundred fifty dollars for a project with a cost of \$500,000 or more.

C. A governing authority applying for a health care institution license shall submit a license fee to the Department as follows:

1. One hundred dollars for a health care institution with no beds;
2. One hundred dollars for a health care institution with 1 to 59 beds plus an additional \$10 per bed;
3. Two hundred dollars for a health care institution with 60 to 99 beds plus an additional \$10 per bed;
4. Three hundred dollars for a health care institution with 100 to 149 beds plus an additional \$10 per bed; or
5. Five hundred dollars for a health care institution with 150 or more beds plus an additional \$10 per bed.

D. A governing authority of a health care institution shall submit, annually to the Department, on or before the anniversary date of licensure, the license fee listed in subsection (C).

E. If a governing authority is licensed to provide behavioral health services in addition to other medical and health-related services in a health care institution, the governing authority is not required to submit license fees for the provision of behavioral health services.

F. A governing authority increasing the number of beds in a licensed health care institution shall submit license fees for additional beds according to subsection (C).

NOTICE OF PROPOSED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 4. DEPARTMENT OF ENVIRONMENTAL QUALITY
SAFE DRINKING WATER**

PREAMBLE

1. Sections Affected

R18-4-101	Amend
R18-4-104	Amend
R18-4-120	Amend
R18-4-122	Amend
Article 2.	Amend
R18-4-206	Amend
R18-4-212	Amend
R18-4-216	Amend
R18-4-219	Amend
R18-4-224	New Section
R18-4-225	New Section
R18-4-226	New Section
Article 4.	Amend
R18-4-401	Amend
R18-4-402	Amend
R18-4-404	Amend
R18-4-405	Amend

Rulemaking Action

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. §§ 49-202, 49-351, 49-353, A.R.S. § 4-360

Implementing statutes: A.R.S. § 49-360

3. A list of all previous notices appearing in the Register addressing the proposed rules:

Notice of Docket Opening: 3 A.A.R. 1691, June 20, 1997

Notice of Proposed Rulemaking: 3 A.A.R. 3396, December 5, 1997

Notice of Termination of Rulemaking: 4 A.A.R. 1872, July 17, 1998

Notice of Proposed Rulemaking: 4 A.A.R. 1872, July 17, 1998

Notice of Termination of Rulemaking (this issue of the Register): 4 A.A.R. 2625, September 18, 1998

Notice of Docket Opening (this issue of the Register): 4 A.A.R. 2629, September 18, 1998

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Margaret L. McClelland or Martha L. Seaman

Address: Arizona Department of Environmental Quality
3033 North Central Avenue
Phoenix, Arizona 85012

Telephone: (602) 207-2222

Facsimile: (602) 207-2251

5. An explanation of the rule, including the agency's reasons for initiating the rule.

The purpose of this rulemaking is to implement a monitoring assistance program authorized in Laws 1998, Ch. 298, § 6 (HB 2231), passed during the 1998 legislative session. This program will provide for the collection, transportation and analysis of certain baseline samples from public water systems in a frequency sufficient to keep the systems in compliance with the federal Safe Drinking Water Act requirements. A.R.S. § 49-360, as amended by HB 2231, requires that the Arizona Department of Environmental Quality (ADEQ) contract with 1 or more private parties or statewide nonprofit organizations representing water systems to implement the monitoring assistance program, subject to available funding. The rules will also establish fees to support the program.

A. Background for These Proposed Rules

During the 1997 legislative session, the Arizona Legislature 1st passed § 49-360 which authorized the ADEQ to establish a cen-

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tralized monitoring program to assist public water systems in complying with the monitoring requirements under the Federal Safe Drinking Water Act (SDWA). The Department proposed and adopted rules which were heard before the Governor's Regulatory Review Council (Council) on April 7, 1998. The Council tabled action on the rulemaking for up to 90 days to allow ADEQ to have further dialogue with interested parties regarding issues raised at the Council meeting. While the rules were tabled, the Arizona legislature again considered the centralized monitoring program and ADEQ began dialogue with stakeholders at the legislature. As a result, the legislature passed HB 2231, which amended A.R.S. § 49-360, requiring ADEQ to establish the monitoring assistance program through rulemaking. The rulemaking which had been tabled by GRRC was withdrawn and terminated, and the Notice of Proposed Rulemaking for the monitoring assistance program rulemaking was proposed and published in the July 17, 1998, *Arizona Administrative Register (Register)*.

ADEQ held 5 informal meetings around the state during July and August to discuss with stakeholders the proposed rule to establish the monitoring assistance program. ADEQ also held 1 oral proceeding at ADEQ on August 24, 1998, to receive comments and the close of record was scheduled for August 28, 1998. However, in the interim, ADEQ discovered a flaw in the notice of this rulemaking. The Notice of Docket Opening had not been submitted to the Secretary of State's (SOS) office for publication in the *Register* as required by the Administrative Procedures Act.

To cure this flaw, ADEQ filed 3 documents, simultaneously, with the Office of the Secretary of State for publication in the September 18, 1998, *Register*. ADEQ filed a notice to terminate the Notice of Proposed Rulemaking which appeared in the July 17, 1998, *Register*. ADEQ also filed a Notice of Docket Opening and this Notice of Proposed Rulemaking. The rule text which appears in this Notice of Proposed Rulemaking is exactly the same as that which appeared in the July 17, 1998, *Register*. Only this preamble was modified to explain the 3 filings with the SOS, to provide for 1 oral proceeding on October 19, 1998, at ADEQ, and to add a listing of previously filed notices in accordance with the Arizona Administrative Procedures Act. Comments received during the August 1998, formal comment period will be responded to in the Notice of Final Rulemaking.

The primary purpose of the SDWA is to ensure that drinking water supplied to consumers by public water systems is safe to drink and does not exceed prescribed maximum contaminant levels (MCLs). Water suppliers are required to conduct monitoring every 3 years to verify that MCLs are not exceeded and to report the results to the ADEQ. If there are any MCL violations, the water supplier is required to provide public notification to persons who are served by the public water systems and to take necessary actions to eliminate the violations.

Drinking water monitoring requirements have been in existence since at least 1962. Beginning with the passage of the 1986 Drinking Water Act Amendments, the rate of change to the monitoring requirements has accelerated. As a result, the current monitoring requirements are extremely complex, difficult to understand and compliance is expensive.

Compliance monitoring rates for inorganic chemicals, VOCs and SOCS are extremely low. ADEQ has had a concerted technical assistance program, as well as an aggressive enforcement program. As a result of the lack of compliance monitoring, the water quality regarding these contaminants is unknown for most public water systems, particularly small water systems.

Some water systems spent considerable sums of money on monitoring and found themselves still out of compliance. These systems had not taken the appropriate number of samples at the appropriate locations in the appropriate time-frames, or failed to instruct the laboratories to run the appropriate analyses. Some results were rejected by ADEQ for reasons associated with the analytical methods used by the laboratories. These problems combined to produce a groundswell of dissension in the drinking water industry that reached a crescendo in 1996. In response, a study team led by members of the Arizona Legislature, was formed and held a series of legislative hearings around the state during the summer of 1996 to hear about the problems and concerns facing small water systems. It produced a series of 11 recommendations which comprised the bulk of the content of SB 1252 passed during the 1997 legislative session, and HB 2231 passed during the 1998 legislative session.

HB 2231 also established the Monitoring Assistance Fund, which will consist of fees collected from participating public water systems. The fees are to be used to pay the monitoring assistance program contractors, and the environmental laboratories that perform the analyses. In addition, a portion of the fees are applied to the administrative costs incurred by ADEQ.

B. Specific Section-By-Section Explanation of This Proposal

R18-4-101:

This is the definition section for rules in Chapter 4, Safe Drinking Water. In this Section, ADEQ proposes new definitions for the monitoring assistance program for the terms "baseline monitoring", "contractor", "monitoring assistance program", "meter", "meter weight" and "unit fee".

To prevent duplicate reporting, ADEQ proposes to amend R18-4-104(A) and (I) to clarify that the water supplier is not required to report the results of any analysis taken under the monitoring assistance program that results in non-detection. ADEQ proposes to amend Subsection (J) to clarify that a water supplier is required to report the failure to comply with monitoring requirements for analyses taken under the monitoring assistance program requirements. Additionally, ADEQ proposes to amend Subsection (J) to exclude analyses taken under the monitoring assistance program from reporting requirements for confirmation samples required under this subsection.

ADEQ proposes to amend R18-4-120 to clarify that monitoring conducted by the contractor shall not be used by a public water system for compliance purposes, with the exception of analyses covered by the monitoring assistance program.

ADEQ proposes to amend R18-4-122 to add subsection (B) which provides that if the water supplier denies, restricts, limits or obstructs the contractor's access to a facility, the public water system shall be responsible for the resulting noncompliance. The

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covered contaminants may be collected only by the contractor or ADEQ.

ADEQ proposes to amend R18-4-206 to establish that the contractor may take and composite samples and take confirmation samples ADEQ approval, for listed inorganic chemicals, on behalf of the CWS or NTNCWS under the monitoring assistance program. This proposed Section will also establish that the water supplier shall be responsible for the costs for resampling and analyses taken under the monitoring assistance program.

ADEQ proposes to amend R18-4-212, to establish that the contractor may composite samples taken on behalf of the CWS or NTNCWS under the monitoring assistance program. It also provides for ADEQ to reduce the frequency of monitoring and for ADEQ to grant VOC monitoring waivers and update a water system's vulnerability assessment, on the Department's own initiative.

ADEQ proposes to amend R18-4-216 to provide that the contractor may conduct monitoring on behalf of the CWS or NTNCWS for listed synthetic organic chemicals. ADEQ may grant SOC monitoring waivers on its own initiative.

ADEQ proposes to amend R18-4-219 to provide for compositing samples under the monitoring assistance program.

The proposed Section R18-4-224 will establish the requirements for the monitoring assistance program. It will establish who shall or may participate, for what chemicals monitoring shall be conducted and responsibilities of the public water system under the monitoring assistance program.

ADEQ proposes R18-4-225 to establish the fee requirements for the public water system for costs incurred under the monitoring assistance program. For systems that serve ≥ 100 service connections, subsection (B) will establish the annual unit fee at \$3.50. For systems with fewer than 100 service connections, ADEQ has provided 2 options in subsection (C) which the ADEQ is considering for inclusion in the rule. One option for subsection (C) is included in each of the 2 Sections R18-4-225 included in the rule text. One option provides for a flat fee of \$350 to be paid annually. The other option provides for payment of an annual unit fee of \$3.50, as the systems with ≥ 100 service connections will pay. ADEQ will seek input on these options during the public comment period and will determine what the final language for that subsection will be prior to filing the proposed rules with the Governor's Regulatory Review Council. Subsections (B) and (C) each contain provisions for an increase in the fee based on the weighted percentage increase, if any, in the contract costs as of the close of the 12-month period ending on December 31, of that year.

It will provide that a public water system which serves more than 10,000 persons shall pay its total annual monitoring fees prior to commencement of monitoring by the Department and must participate for the entire compliance period.

ADEQ proposes R18-4-226 to establish the requirements for collection of fees by the public water system and payment of those fees to ADEQ. It will provide for mailing of the invoice by ADEQ and for requirements for refunds, billing corrections, verification by ADEQ the number and size of meters or number of service connections and the provision that ADEQ shall not waive fees.

ADEQ proposes to amend R18-4-401 to establish that the contractor may conduct compliance monitoring for a CWS and NTNCWS for sulfate and apply for waivers under the monitoring assistance program. ADEQ, on its own initiative, may grant waivers of sulfate.

ADEQ proposes to amend R18-4-402 to establish that the contractor may conduct monitoring for sodium on behalf of the CWS.

ADEQ proposes to amend R18-4-404 to provide that, under the monitoring assistance program, the contractor may conduct monitoring on behalf of the CWS or NTNCWS for the unregulated volatile organic chemicals, apply for waivers on behalf of a PWS, and that ADEQ may, on its own initiative, grant waivers.

ADEQ proposes to amend R18-4-405 to provide that, under the monitoring assistance program, the contractor may conduct monitoring on behalf of the CWS or NTNCWS for listed unregulated synthetic organic chemicals, and that ADEQ may, on its own initiative, grant waivers.

6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

W. Coniglio, P. Berger, & J. Cotruva, "Water Pollution and Chemical Contamination in Drinking Water", Principles and Practices of Environmental Medicine ed. by Tarcher, M.D., New York: Plenum Publishing, 1992. Available for review in the public rulemaking docket available at ADEQ at 3033 North Central Avenue, Phoenix 85012.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

8. The preliminary summary of the economic, small business, and consumer impact:

Under authority of § 49-360 in HB 2231, the Arizona Department of Environmental Quality (ADEQ) will establish the monitoring assistance program to assist public water systems (PWSs) in complying with monitoring requirements under the Federal Safe Drinking Water Act. The Department must contract with 1 or more private sector entities to implement the program, which is mandatory for all small PWSs (those serving 10,000 people or less), and is optional for those that serve more than 10,000.

There are a total of 1,764 PWSs in Arizona, 979 (55%) of which are to be governed by this rule. All 979 systems serve fewer

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than 10,000 people, and are either community water systems (CWSs) or non-transient, non-community water systems (NTNCWSs). CWSs are those that deliver water to at least 25 people or 15 service connections year round; and NTNCWSs serve an average of 25 persons (or 15 service connections) or more for at least 6 months a year.

The Monitoring Assistance Program

The monitoring assistance program provides for a chemical monitoring process which consists of the collection, transportation and analytical testing of baseline samples from all participating PWSs. Under the program, the contractors will collect and transport samples to monitor a total of 98 regulated and unregulated contaminants under the following categories: volatile organic chemicals (VOCs), synthetic organic chemicals (SOCs) and inorganic chemicals (IOCs) except for asbestos, copper, lead, nitrates and nitrites. All samples that are tested and discovered to exceed maximum contaminant levels (MCLs) will be subjected to required increased sampling and public notification requirements by the PWS owner, as stipulated by existing rules.

To implement the program, the Department will enter into a contract with 1 or more private sector contractors to collect drinking water samples and transport these to laboratories. Analytical testing will be carried out by laboratories certified by the Arizona Department of Health Services (ADHS) or the US Environmental Protection Agency (EPA), and that meet specific criteria for laboratory qualifications and performance established by ADEQ. Chemicals not covered by the rule (the remaining IOCs, radiochemicals and other contaminants including total coliform) will still be monitored as required by existing State rules (18 A.A.C. 4, Article 2), but they will continue to be the responsibility of the PWS.

The Department also anticipates contracting with a private sector entity to carry out the following services: 1) assist participating PWS to apply and qualify for waivers; and 2) provide on-site technical assistance necessary to all PWS in need of monitoring assistance with any portion of the Federal Safe Drinking Water Act.

NON-COMPLIANCE

Under current State law, sampling and testing to ensure safe drinking water for Arizona's residents is a responsibility of the PWS. To achieve compliance under existing State rules, all PWSs are supposed to have:

- a) monitored for all contaminants in the required frequency;
- b) monitored all their sampling locations or points of entry (POEs); and
- c) carried out the monitoring during their assigned monitoring year.

Based on these requirements, there has tended to be a high noncompliance rate among small PWSs in Arizona. Indicative of this noncompliance is PWS performance pertaining to SOCs. ADEQ records show that only 26% of PWSs at that time fully complied during the 1993-95 monitoring period (939 was the total in 1995, as differentiated from the FYE 1997 total of 979). Another 43% were in partial compliance (that is, they monitored for fewer than the required number of SOCs); and 31% did not monitor at all. Thus, a fairly large majority (74%) of small systems have exhibited monitoring deficiencies of one kind or another.

This level of monitoring noncompliance makes it extremely difficult for the Department to assure the public that its drinking water supply is safe. Certainly, for those residents whose water comes from sources that have not been sampled and tested, questions about public health and safety are raised. Thus, ADEQ will implement the monitoring assistance program to ensure that the required monitoring is performed and public health is protected.

THE COST OF COMPLIANCE

To pay for the program, the Department is authorized to assess fees from all participating PWS. Fees will be assessed annually to cover the 1st monitoring cycle January 1, 1999, to December 31, 2001. Collection will commence as soon as these rules are approved. The fee will be standardized according to the resident's or customer's number of service connections and meter size. The base rate will consist of an annual unit fee of \$3.50 per year for a 3/4-inch service connection. PWS with fewer than 100 service connections will pay either an annual unit fee of \$3.50 or a flat fee of \$350 per year, to be determined after the comment period is held.

The program will be implemented subject to available funding. The fees collected by the Department will be used to pay the contractors for sampling, analytical testing, waivers and monitoring technical assistance. If detects or maximum contaminant levels (MCLs) occur, the relevant PWS will be required to pay for the increased sampling frequency and other corrective action measures.

The aim of the monitoring assistance program, then, is to assist PWS to achieve monitoring compliance for the covered contaminants. In cases where MCL violations occur, the relevant PWS will be subjected to public notice requirements, and ADEQ will take the necessary steps for the protection of public health.

DISTRIBUTION OF COSTS

The cost allocation method is as follows: each PWS determines the number and size of all of its water meters and/or service connections by June 30 of each year. The PWS owner or operator transmits this information to ADEQ by October 1 of the same year. ADEQ prepares an invoice based on this information and sends out a bill to the PWS owner/operator charging a unit fee for each size of service connection and/or meter. Participating PWS will be billed annually.

The monitoring assistance program budget for the 1st monitoring cycle will be developed as soon as the contractual agreements

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between ADEQ and the contractors are finalized. Budget projections will reflect the contractors' costs based on the business plan for implementing the program. An important component of the contractor's business plan will consist of the costs for transportation and analytical testing of water samples. For the analytical testing component of the program, the contractors will negotiate with ADHS-licensed or EPA-approved private laboratories that meet the qualifications and performance criteria established by ADEQ, before finalizing the contract with ADEQ. Contractor negotiations are expected to focus on details of a sampling plan for all 979 small PWS, and will exclude all costs for required re-sampling.

MONITORING ASSISTANCE PROGRAM SAMPLING PLAN

A detailed monitoring assistance program sampling plan has yet to be developed by the contractors in conjunction with ADEQ. The sampling plan is expected to be crafted according to specific variables that will dictate costs. Among the cost variables are:

- a) the number of sampling locations or points of entry (POEs);
- b) the required sampling frequency;
- c) the water source (whether surface or groundwater);
- d) the frequency of allowed compositing;
- e) the EPA-approved testing method;
- f) the number of waivers granted; and
- g) transportation and shipping costs.

MONITORING ASSISTANCE PROGRAM BENEFITS

The benefits of the monitoring assistance program are anticipated to result in universal compliance for contaminants covered under this program by all small PWS in the State, which will be an improvement from the currently high noncompliance rate. Private sector contractors and the laboratories with which they sub-contract, are also expected to profit from the program. Public health benefits associated with health and safety derive from delivery of safe drinking water.

ADEQ believes that the benefits of the monitoring assistance program will outweigh its costs to the degree that safe drinking water is critical to general public health, and contributes in a significant way to the prevention of many diseases. All the contaminants that are required to be tested for, are either known carcinogens or have been known to cause or be associated with many other diseases, including kidney and liver diseases. There are documented cases of MCL exceedances in Arizona that have posed a clear threat to public health.

Although pathogens in inadequately treated drinking water are still the greatest public health concern related to drinking water, increased industrialization, the widespread use of industrial and agricultural chemicals, and the disposal of large volumes of industrial wastes require the protection of drinking water from contamination with chemical agents. Over 60,000 chemicals are being used nationwide by industry and agriculture which can pollute both surface and groundwater sources of drinking water. The quality of drinking water can be compromised by a number of processes which include leakage from underground storage tanks, agricultural run-off, improper industrial practices, mining operations, the subsurface injection of waste chemicals and brines, and corrosive water.¹ When drinking water quality is compromised, ADEQ intends that the monitoring assistance program will be used to document any existing problems and to take the necessary steps to protect public health.

ARS § 41-1055 Requirements for an EIS

B(2) PERSONS DIRECTLY AFFECTED BY THE RULE

- a) Arizona Department of Environmental Quality --

ADEQ, as the implementing agency, is charged with administering the contract(s) that will implement the program. The Department will also take charge of the billing and collection of fees, as well as the management of the Monitoring Assistance Fund.

- b) Arizona Department of Health Services (ADHS) Laboratory Licensure and State Laboratory --

Laboratory Licensure certifies private commercial laboratories, both in and outside Arizona. Certification, for purposes of this program, means drinking water analytical testing certification.

- c) Arizona Corporation Commission (ACC) -- The ACC regulates all PWS that are classified as utilities and corporations, except trusts, cooperatives, partnerships and sole proprietorships. If, as a result of the monitoring assistance program, the PWS will increase the fees they collect from their residents and customers in an amount that exceeds 10% of current fees, the PWS will have to seek approval from ACC for any surcharge increase. If the PWS will decrease the fees they charge their customers, they will apply to ACC for the appropriate rate adjustment.

- d) Public Water Systems (PWSs) -- Regulated entities who will be governed by this rule are all small PWSs (serving 10,000 or fewer people), as well as PWSs serving more than 10,000 that choose to participate in the program. All participating PWSs will

1. W. Coniglio, P. Berger, & J. Cotruvo, "Water Pollution and Chemical Contamination in Drinking Water", *Principles and Practice of Environmental Medicine* ed. by A. Tarcher, M.D., New York: Plenum Publishing, 1992.

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be required to remit to ADEQ the program fees established in this rule.

e) Private Laboratories -- Private Laboratories that are ADHS-certified and meet laboratory qualifications and performance criteria established by ADEQ, and enter into a contractual agreement with the ADEQ contractors, will carry out analytical testing of samples collected by the contractors.

f) Private Sector Suppliers -- Businesses in the various industries that will be directly and indirectly affected by the monitoring assistance program monitoring process (manufacturers and distributors of bottles and other supplies used for sampling and testing, transportation companies, businesses supplying vehicles, computers, etc.), will benefit from new business that will accompany the required monitoring.

g) Residents and Water Consumers of the State -- Arizona residents and water consumers who are served by the participating PWS, will benefit from a greater assurance of the safety of their drinking water supply.

g) Taxpayers -- The taxpaying public that supports public entities like municipalities and school districts will provide a partial subsidy for this program through the use of funds for that portion of the program that will cover the costs of monitoring PWS owned and operated by these entities.

B(3) COST-BENEFIT ANALYSIS

I. COSTS AND BENEFITS TO STATE AGENCIES

A. AZ Department of Environmental Quality

The Department will administer the contracts to implement the program. The Department will also prepare the fee invoices from population and service connections data submitted by participating PWS, collect the fees and pay for program costs subject to available funding. To defray the costs of administration, ADEQ will retain 10% of all revenues from collected fees.

Program expenditures will be heavily influenced by the cost variables indicated above, and on what the contractors will bring to the negotiating table. The Department will look to the contractors' ability to develop a sampling plan that can accomplish all the required monitoring within the limits of the established fees. The Department also expects that the contractors will have the expertise necessary to get the job done right and on schedule, and to be able to fulfill all the legal and technical requirements of the Safe Drinking Water Act with respect to the monitoring of covered contaminants.

Through the monitoring assistance program, ADEQ will also acquire statewide monitoring data needed for implementing Permanent Monitoring Relief (PMR) which, when enacted at the Federal level, will be adopted by the State. In 1997, EPA issued guidelines for states to follow in proposing alternative monitoring requirements for chemical contaminants. Congress recognized that as a state gains a better understanding of the contamination sources that may affect the quality of a drinking water supply, the State would be in an appropriate position to tailor the monitoring requirements for the system while continuing to provide effective public health protection. Source water assessment programs are designed to generate the information that will enable states to offer alternative monitoring to PWS in appropriate circumstances. Alternative monitoring must ensure that public health is protected from drinking water contamination, that a state program will apply on a contaminant-by-contaminant basis and that a PWS must show the state that the contaminant is not present in the drinking water supply (or, if present, is reliably and consistently below the maximum contaminant level). ADEQ anticipates PMR to be in place at the federal level after August 6, 1999.

B. Arizona Department of Health Services (ADHS)

The ADHS Laboratory Licensure certifies commercial laboratories to ensure that they are qualified and equipped to conduct analytical testing for drinking water and all other environmental compliance tests. To issue a certification, ADHS charges the laboratory an annual non-refundable application fee which is based on the number of licensed parameters (ranging from \$1,000 for 1 to 9 parameters, to \$1,400 for more than 17 parameters). In addition to the licensure application fee, applicants pay for the licensure of approved methods and associated instrumentation according to a fee schedule that is set in ADHS rules.

There may be some increase in ADHS certification and laboratory activities as a result of this rule, but no incremental costs or benefits to the agency are anticipated.

C. Arizona Corporation Commission (ACC)

The ACC regulates all privately-owned PWSs classified as utilities and corporations. ACC staff may see more applications coming into the agency for water utility surcharges, but there will be no incremental costs and benefits to the agency. Any costs the agency may incur as a result of this program will come mainly from granting authority to PWSs under its jurisdiction to recover the costs of the monitoring assistance program. The ACC has developed a form to facilitate this process. At present, there are 410 PWSs (41% of the total) which are regulated by ACC.

D. State agencies that are regulated by ADEQ -- State agencies that are small PWS owners/operators such as the AZ Department of Corrections and the AZ Department of Transportation, will continue to be monitored but are exempt from the payment of fees and will not be affected by this rule.

II. COSTS AND BENEFITS TO POLITICAL SUBDIVISIONS OF THE STATE

A. Municipalities, counties and quasi-government entities including school districts, Domestic Water Improvement Districts (DWID's) and universities that are small PWS, are required to participate in the program. Over 200 small PWS fall under this category.

Part of the benefits that small PWS will realize from this program, whether they are public or privately-owned, is that they will be relieved of the administrative burdens of sampling and testing for the covered contaminants. Many system owners have complained in the past that existing monitoring rules are too complex, confusing, and difficult to follow. This rule will enable ADEQ contractors to collect and transport the samples, and let private laboratories carry out the testing.

III. COSTS AND BENEFITS TO PRIVATE BUSINESSES, INCLUDING SMALL BUSINESSES

A) ADEQ Contractors -- ADEQ will contract with 1 or more private sector entities or statewide non-profit organizations representing water systems to implement the monitoring assistance program. The contractors will prepare a sampling plan, in conjunction with ADEQ, intended to complete all required monitoring during the 1st monitoring cycle.

B) Contract Laboratories -- Private laboratories that meet all qualifications and performance criteria established by ADEQ, and that contract with ADEQ contractors, will provide and be paid for analytical testing services. They will be required to submit test results to ADEQ, the ADEQ contractors and the PWS.

Analytical testing for the monitoring assistance program will constitute a business opportunity for the contracted laboratories. Their incremental business opportunity is represented by work that will be created to achieve compliance monitoring for all PWSs who have exhibited monitoring deficiencies in the last 2 monitoring cycles. Universal compliance will constitute a significant increase, from current levels, in the number of samples collected and tested. It is assumed that laboratory contract prices will be reflected in the ADEQ contractors' negotiated contract fees and will contain a profit margin commensurate with the contractors' and laboratory owners' desired rate of return.

B) Privately-owned Public Water Systems (PWSs) -- Private PWSs are composed of for-profit companies or non-profit organizations. ADEQ records indicate that private PWSs constitute more than 3/4 (78.6%) of Arizona PWSs, and only 21.4% are made up of municipalities or quasi-government entities.

Analytical testing costs for a set of samples from any 1 PWS could vary considerably, a principal variable being its number of points of entry or POEs. Sampling requirements for groundwater sources will apply in the vast majority of cases, since 98% of PWSs have groundwater sources exclusively. A small minority of PWSs with surface water sources will require different sampling frequencies during the 3-year monitoring cycle: an annual sample for VOCs and IOC. The costs for surface water sampling and monitoring will therefore be greater. Small PWSs serving more than 3,300 people will also have greater SOC sampling frequencies, since they have to monitor during 2 non-consecutive quarters every 3 years.

Costs for Compliance

The fee formula will be based on the total number of service connections reported by PWS to ADEQ, adjusted for meter size. However, all PWS that have fewer than 100 service connections will be billed either a flat fee of \$350 per annum or an annual unit fee of \$3.50, depending on the option chosen by ADEQ. The table below shows that the base rate of \$3.50 will apply to customers who have a 3/4 inch pipe (typical of residential areas). If the customer is a commercial or industrial establishment with a meter size of 8" or greater, its annual bill will be \$186.66. The fees are based on data derived from the Department's service connections survey, as indicated in the table.

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ADEQ DRINKING WATER SECTION:
SERVICE CONNECTIONS INVENTORY SURVEY

METER SIZE:	NUMBER (#):	PERCENTAGE (%):	METER WEIGHT FACTOR:	AVERAGE UNIT FEE:
≤ 0.75"	183,275	79.41%	1.00	\$3.50
1"	9,509	4.12%	1.67	\$5.85
1.5"	1,063	0.46%	3.33	\$11.66
2"	2,717	1.18%	5.33	\$18.66
3"	393	0.17%	10.00	\$35.00
4"	201	0.09%	16.67	\$58.35
6"	95	0.04%	33.33	\$116.66
≥ 8"	555	0.24%	53.33	\$186.66
Non-Reporting Estimate:	32,984	14.29%		
TOTAL:	230,792	100.00%		

The table shows that almost 80% of all reported service connections have a meter size of less than or equal to 3/4 of an inch. Thus, the vast majority of customers will pay the average minimum fee of \$3.50 per service connection per year. The meter weight factor is a multiplier based on the pipe diameter size, using as the base reference point the most commonly occurring meter size used for residential households (3/4 inch) which has a multiplier of 1.00. The 3/4 inch pipe has a maximum flow rate of 30 gallons per minute. A pipe of 1" in diameter has a maximum flow rate of 0.67 more than a 3/4 inch pipe; thus it has a meter weight of 1.67, and so on. This is a standard utility design method obtained from the Arizona Corporation Commission and verified with the American Waterworks Association.

C) Contingency Costs and Benefits

1. Public Notification -- All non-monitoring PWS are required to give public notice. Furthermore, if an MCL exceedance is detected from the testing of a sample, the public served by the relevant PWS has to be notified within 48 hours of completed test results. This is a contingency cost required by the existing rule. Local newspapers and other publications which contain public notices will benefit from new business which will stem mainly from PWS that are found to have MCL violations.

The costs for public notification vary with each newspaper, number of words contained in the public notice, day of publication and circulation size. The benefits of public notification derive from alerting the relevant public to possible questions regarding the safety of their drinking water supply. This will enable residents to seek alternative sources of drinking water until the problem is verified and resolved. The consuming public will thus avoid the adverse consequences of drinking unsafe water.

2. Compositing -- Compositing, which is allowed only for SOC samples, may occur when certain conditions are met. Compositing can cut costs significantly because it allows up to 5 samples to be tested as a single sample. Savings could be as much as 80% for a group of samples if the appropriate conditions apply. For systems serving fewer than 3,300 people, compositing between systems may be done; for those serving more than 3,300, compositing within the system may be carried out.

3. Waivers -- Waivers are designed to reduce sampling frequency and therefore, the costs of monitoring, when the risks of contamination are determined by ADEQ to be low. The Department may grant a waiver if ADEQ program staff determine that a system is unlikely to become contaminated, or that any contamination will remain reliably and consistently below the MCLs during the waiver period. Thus, significant savings could also occur from a waiver program.

The cost of public notification in the event of a detect or MCL violation will be borne by the relevant PWS owner or operator. But expenditures for repeat sampling for systems found to be in violation, as well as the savings benefits stemming from all composited samples and waivers will be allocated to all participating systems.

IV. COSTS AND BENEFITS TO RESIDENTS AND CONSUMERS

Residents and consumers of participating PWS are expected to be affected in differential ways, depending on whether or not the PWS has done any monitoring in the past, and on whether the PWS chooses to pass on the monitoring costs to its customers. The biggest incremental impact will be on those consumers whose water providers have not monitored at all, and who will now commence charging monitoring fees.

If the PWS has monitored in the past, their residents and consumers will be affected by how much of the proposed monitoring fees differ from what PWS charged in the past. Although customers' costs are fixed by the fee schedule, contractors' costs will

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be highly dependent on whether their sampling plan will be able to accomplish monitoring on schedule and within the monetary limits established by the fees.

ADEQ believes that with implementation of the monitoring assistance program, the entire population of Arizona served by small drinking water systems will be assured of current information about their water quality.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Margaret L. McClelland or Martha L. Seaman
Address: Arizona Department of Environmental Quality
3033 North Central Avenue
Phoenix, Arizona 85012
Telephone: (602) 207-2222
Fax: (602) 207-2251

10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:

ADEQ will hold an oral proceeding to receive public comments in accordance with A.R.S. § 41-1023. The time, place, and location of the hearing is listed below:

PHOENIX

October 19, 1998

8 a.m.

Arizona Department of Environmental Quality
3033 North Central Avenue, Room 1710
Phoenix, Arizona 85012

ADEQ will accept oral or written comments which are received by 11 a.m. on October 19, 1998.

ADEQ is committed to complying with the Americans With Disabilities Act. If any individual with a disability needs any type of accommodation, please contact ADEQ at least 72 hours before the hearing.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable.

12. Incorporations by reference and their location in the rules:

None.

13. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 4. DEPARTMENT OF ENVIRONMENTAL QUALITY

SAFE DRINKING WATER

ARTICLE 1. DEFINITIONS

Section

- R18-4-101. Definitions
R18-4-104. Reporting Requirements
R18-4-120. Monitoring and Sampling by the Department
R18-4-122. Entry and Inspection of Public and Semipublic Water Systems

**ARTICLE 2. MAXIMUM CONTAMINANT LEVELS
MONITORING REQUIREMENTS; MONITORING
ASSISTANCE PROGRAM**

- R18-4-206. Monitoring Requirements for Antimony, Arsenic, Barium, Beryllium, Cadmium, Chromium, Cyanide, Fluoride, Mercury, Nickel, Selenium and Thallium
R18-4-212. Volatile Organic Chemicals; Monitoring Requirements
R18-4-213. Vinyl Chloride; Monitoring Requirements

- R18-4-216. Synthetic Organic Chemicals; Monitoring Requirements
R18-4-219. Sample Compositing
R18-4-224. The Monitoring Assistance Program
R18-4-225. Fees for the Monitoring Assistance Program
R18-4-226. Collection and Payment of Fees

ARTICLE 4. SPECIAL MONITORING REQUIREMENTS

- R18-4-401. Special Monitoring Requirements for Sulfate
R18-4-402. Special Monitoring for Sodium
R18-4-404. Special Monitoring for Unregulated Volatile Organic Chemicals
R18-4-405. Special Monitoring for Unregulated Synthetic Organic Chemicals

ARTICLE 1. GENERAL REQUIREMENTS

R18-4-101. Definitions

In this Chapter the following terms mean:

1. No change

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2. No change
3. No change
4. No change
5. No change
6. "Baseline monitoring" means the routine monitoring of contaminants covered under the monitoring assistance program for the purpose of determining compliance with the contaminants listed in Article 2, not including repeat or resampling necessary for compliance after detection of a contaminant or an MCL violation.
67. No change
78. No change
89. No change
910. No change
1011. No change
1112. No change
1213. No change
1314. No change
1415. No change
16. "Contractor" means the private party, or statewide non-profit organization representing water systems, that the Department contracts with to implement the monitoring assistance program in accordance with the requirements of A.R.S. § 49-360(B).
1517. No change
1618. No change
1719. No change
1820. No change
1921. No change
2022. No change
2123. No change
2224. No change
2325. No change
2426. No change
2527. No change
2628. No change
2729. No change
2830. No change
2931. No change
3032. No change
3133. No change
3234. No change
3335. No change
3436. No change
3537. No change
3638. No change
3739. No change
3840. No change
3941. No change
4042. No change
4143. No change
4244. No change
4345. No change
4446. No change
4547. No change
4648. No change
4749. No change
4850. No change
4951. No change
5052. No change
5153. No change
5254. No change
5355. No change
5456. No change

57. "Meter" means a device that measures the volume of water that has passed through it.
58. "Meter weight" means the number of gallons per minute (gpm) that flows through a meter divided by 30.
5559. No change
5660. No change
61. "Monitoring assistance program" means the program established pursuant to A.R.S. § 49-360, under which the contractor provides for collection, transportation and analysis of samples from a public water system in accordance with the provisions of R18-4-224 through R18-4-226.
5762. No change
5863. No change
5964. No change
6065. No change
6166. No change
6267. No change
6368. No change
6469. No change
6570. No change
6671. No change
6772. No change
6873. No change
6974. No change
7075. No change
7176. No change
7277. No change
7378. No change
7479. No change
7580. No change
7681. No change
7782. No change
7883. No change
7984. No change
8085. No change
8186. No change
8287. No change
8388. No change
8489. No change
8590. No change
8691. No change
8792. No change
8893. No change
8994. No change
9095. No change
9196. No change
9297. No change
9398. No change
9499. No change
95100. No change
96101. No change
97102. No change
103. "Unit fee" means the amount charged to a public water system under the monitoring assistance program for a meter weight of 1 in accordance with R18-4-225.
98104. No change
99105. No change
100106. No change
101107. No change
102108. No change
103109. No change
104110. No change

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R18-4-104. Reporting Requirements

- A. Routine monitoring: Except as specified in this subsection, a water supplier shall report the result of any test measurement or analysis required by Article 2, except that the contractor shall report for an analysis taken under the monitoring assistance program, to the Department within the 1st 10 days following the month that the water supplier receives the analytical result or the 1st 10 days following the end of an applicable monitoring period prescribed by Article 2, whichever is less.
1. Fecal coliform / *E. coli*: If any routine or repeat sample for total coliform is positive, the water supplier shall have the total coliform-positive sample analyzed to determine if fecal coliforms are present, except that the water supplier may test for *E. coli* instead of fecal coliforms. If fecal coliforms or *E. coli* are present in a total coliform-positive sample, a water supplier shall report the positive results to the Department, by telephone or facsimile, as soon as possible but no later than 24 hours after receiving notice of the fecal coliform-positive or *E. coli*-positive test result.
 2. Nitrate: If monitoring results indicate an exceedance of the MCL for nitrate in a routine sample, a water supplier is required by R18-4-208(I) to take a confirmation sample within 24 hours of receipt of the analytical results. A water supplier shall report the MCL exceedance to the Department by telephone or facsimile, within 24 hours of receipt of the analytical results.
 3. Total trihalomethanes: A water supplier shall report the arithmetic average of analytical results for total trihalomethanes within 30 days of receipt of the last analytical results of the previous quarter.
- B. No change
C. No change
D. No change
E. No change
F. No change
G. No change
H. No change
I. No change
J. No change
K. Special monitoring: A water supplier that conducts special monitoring prescribed in Article 4, except for an analysis taken under the monitoring assistance program in Article 2, shall report the following information to the Department:
1. A water supplier that monitors for sulfate pursuant to R18-4-401 shall report the sulfate monitoring results within 30 days of receipt of the analytical results.
 2. A water supplier that monitors for sodium pursuant to R18-4-402 shall report the sodium monitoring results in the 1st 10 days of the month after the month that the analytical results were received. A water supplier shall notify the Arizona Department of Health Services [ADHS] and the local county health department of the sodium monitoring results by direct mail within 3 months of receipt of the analytical results. The water supplier shall send a copy of each notice provided to ADHS and the local county health department to the Department within 10 days of issuance.
 3. A water supplier that monitors for unregulated VOCs pursuant to R18-4-404 shall report the analytical results to the Department within 30 days of receipt of the analytical results.
 4. A water supplier that monitors for unregulated SOC's pursuant to R18-4-405 shall report the analytical results

to the Department within 30 days of receipt of the analytical results.

- L. Failure to comply with monitoring requirements: A water supplier shall report the failure to comply with any monitoring requirement prescribed in this Chapter, including an analysis covered by the monitoring assistance program in Chapter 2, within 48 hours except that a public water system that fails to comply with a total coliform monitoring requirement shall report the monitoring violation to the Department within 10 days of discovery.
- M. No change
N. No change
O. No change
P. Confirmation sample results: A water supplier shall report the analytical results of any confirmation sample required by the Department, except a confirmation sample obtained by the a contractor under the monitoring assistance program within 24 hours of receipt of the analytical results.
- Q. No change
R. No change
S. No change
T. No change
U. No change

R18-4-120. Monitoring and Sampling by the Department

- A. The Department, ~~as it considers necessary for the protection of public health,~~ may take samples from a public water system. Upon completion of analytical testing, a copy of the analytical results shall be forwarded to the water supplier. If the Department takes a sample at a public water system, the Department shall forward a copy of the analytical results to the water supplier.
- B. If a public water system fails to ~~conduct required monitoring~~ monitor, the Department may ~~conduct monitoring~~ monitor to determine the system's compliance with maximum contaminant levels MCLs. Any ~~monitoring~~ Monitoring conducted by the Department shall not be used by a public water system to satisfy any monitoring requirements prescribed by this Chapter, except those analyses covered by the monitoring assistance program.
- C. The contractor shall take compliance samples for the categories of contaminants listed in A.R.S. § 49-360(A)(1) - (3) for a public water system that participates in the monitoring assistance program.

R18-4-122. Entry and Inspection of Public and Semipublic Water Systems

- A. ~~A public water system or semipublic water system that is subject to regulation under this Chapter shall allow a designated representative of the Department, upon presenting appropriate credentials, to enter any establishment, facility, or other property to determine whether the water supplier has acted or is acting in compliance with the requirements of this Chapter. Such inspection may include inspection, at reasonable times, of records, files, papers, processes, controls, and facilities or testing any feature of a public water system or semipublic water system, including its source. A Department inspector may, upon presenting appropriate credentials, enter and inspect a public water system and any semipublic water system that is subject to regulation under R18-4-102(B), to determine whether the public water system or semipublic water system is in compliance with the requirements of this Chapter. The inspector may take samples, inspect and copy records required to be maintained pursuant to this Chapter, inspect facilities and equipment, take photographs, and take~~

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other reasonably necessary action to determine compliance with this Chapter.

- B.** If a water supplier for a public water system that participates in the monitoring assistance program denies or restricts the Department or contractor access to the public water system or prevents a Department or contractor employee from collecting a sample covered under the monitoring assistance program, the water supplier shall be legally responsible for the resulting noncompliance with monitoring requirements.

**ARTICLE 2. MAXIMUM CONTAMINANT LEVELS AND
MONITORING REQUIREMENTS; MONITORING
ASSISTANCE PROGRAM**

R18-4-206. Monitoring Requirements for Antimony, Arsenic, Barium, Beryllium, Cadmium, Chromium, Cyanide, Fluoride, Mercury, Selenium, and Thallium.

- A.** A TNCWS is not required to monitor for the inorganic chemicals listed in this Section. Each CWS and NTNCWS, or the contractor on behalf of a CWS or NTNCWS, shall monitor for the following inorganic chemicals:
1. Each CWS shall monitor to determine compliance with the MCLs for antimony, arsenic, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, selenium, and thallium.
 2. Each NTNCWS shall monitor to determine compliance with the MCLs for all of the inorganic chemicals listed in subsection (A)(1) except fluoride and arsenic.
- B.** No change
C. No change
D. A CWS ~~or~~, NTNCWS, or the contractor on behalf of a CWS or NTNCWS, may composite samples for inorganic chemicals as prescribed in R18-4-219.
E. No change
F. No change
G. No change
H. If the analytical results of an initial sample indicate that there is an exceedance of a MCL, the Department may require that a confirmation sample be taken as soon as possible but no later than 2 weeks after the initial sample was taken at the same sampling point, except those analyses covered under the monitoring assistance program. The contractor may take a confirmation sample, with approval of the Department, within the time frames prescribed above.
I. No change
J. A Except for a water supplier subject to the monitoring assistance program, a water supplier may apply to the Department to conduct monitoring at a sampling point more frequently than the monitoring frequency specified in subsection (E). If the Department gives written approval to conduct more frequent monitoring at a sampling point, compliance shall be determined by a running annual average at the sampling point. If the running annual average at the sampling point is greater than the MCL, the public water system is out of compliance. If any single analytical results causes the running annual average to exceed the MCL, the public water system is immediately out of compliance.
K. A water supplier may make a written request to, or the Department under the monitoring assistance program, may reduce monitoring frequency for an inorganic chemical at a sampling point. The Department may reduce monitoring frequency at a sampling point as follows:
1. Groundwater sampling points: The Department may reduce monitoring frequency at a groundwater sampling point from once every 3 years to a less frequent basis if a public water system has monitored at least once every 3

years for 9 years at the groundwater sampling point and all previous analytical results for the inorganic chemical are below the MCL.

2. Surface water sampling points: The Department may reduce monitoring frequency at a surface water sampling point from annually to a less frequent basis if the surface water system has monitored annually at the surface water sampling point for at least 3 consecutive years and all previous analytical results for the inorganic chemical are below the MCL.
 3. The term of reduced monitoring shall not exceed 9 years.
 4. A CWS or NTNCWS shall take at least 1 sample at the sampling point during the reduced monitoring term.
 5. In determining the appropriate reduced monitoring frequency at a sampling point, the Department shall consider the following factors:
 - a. Reported concentrations of the inorganic chemical from all previous monitoring;
 - b. The degree of variation in the reported concentrations of the inorganic chemical; and
 - c. Other factors that may affect the concentration of the inorganic chemical such as changes in groundwater pumping rates, the configuration of the CWS or NTNCWS, operating procedures, stream flows, or source water characteristics.
 6. The Department's decision to reduce monitoring frequency at a sampling point shall be in writing and shall specify the grounds for the decision. A water supplier may make a written request for reduced monitoring or the Department may grant reduced monitoring on its own. A water supplier shall provide documentation of analytical results that support the request for reduced monitoring. When a CWS or NTNCWS submits new data or if other data relevant to the public water system's appropriate monitoring frequency become available, the Department shall review the data and, if appropriate, revise its determination of monitoring frequency.
 7. A CWS or NTNCWS that uses a new source is not eligible for reduced monitoring until it completes 3 consecutive rounds of monitoring from the new source.
- L.** No change

R18-4-212. Volatile Organic Chemical; Monitoring Requirements

- A.** Each CWS ~~and~~, NTNCWS, or the contractor on behalf of a CWS or NTNCWS, shall monitor to determine compliance with the MCLs for the VOCs listed in R18-4-211. A TNCWS is not required to monitor for the VOCs listed in R18-4-211.
- B.** A CWS ~~or~~, NTNCWS, or the contractor on behalf of a CWS or NTNCWS, shall conduct initial monitoring for VOCs in the monitoring year designated by the Department within the initial compliance period, except that a CWS or NTNCWS shall monitor for vinyl chloride only as prescribed in R18-4-213.
- C.** ~~Each A CWS, and NTNCWS, the or contractor on behalf of a CWS or NTNCWS,~~ shall monitor to determine compliance with the MCLs for VOCs at each sampling point as prescribed in R18-4-218.
- D.** ~~A water supplier CWS, NTNCWS, or the contractor on behalf of a CWS or NTNCWS,~~ may composite samples for VOCs, or the contractor may composite samples taken on behalf of a CWS or NTNCWS, as prescribed in R18-4-219.
- E.** A CWS, ~~or~~ NTNCWS, or the contractor on behalf of a CWS or NTNCWS, shall take 4 consecutive quarterly samples at each sampling point for each VOC listed in R18-4-211

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(except vinyl chloride) during the initial compliance period unless a CWS or NTNCWS qualifies for reduced monitoring or obtains a monitoring waiver. A CWS shall conduct initial monitoring for VOCs in the monitoring year designated by the Department within the initial compliance period.

- F. No change
- G. No change
- H. No change
- I. No change
- J. No change
- K. A CWS or NTNCWS that does not detect a VOC at a sampling point in a concentration that is ≥ 0.0005 mg/l during initial monitoring may submit a written request to the Department for a waiver from repeat monitoring requirements at that sampling point. The Department may initiate a waiver for a CWS or NTNCWS. A CWS or NTNCWS may not obtain a waiver from initial monitoring requirements. A monitoring waiver for a groundwater sampling point shall be effective for a term not to exceed 6 years. A monitoring waiver for a surface water sampling point shall be effective for a 3-year term. The Department's decision to grant or deny a request for a monitoring waiver shall be in writing. The Department may grant a monitoring waiver as follows:
 - 1. Use waiver: The Department may grant a use waiver if the Department determines that there has been no previous use of the VOC (including transport, storage, or disposal) within the watershed or zone of influence of a well.
 - 2. Susceptibility waiver: If previous use of the VOC is unknown or if it has been used previously, the Department may grant a susceptibility waiver based upon a vulnerability assessment. The Department shall consider the following factors in deciding whether to grant or deny a susceptibility waiver:
 - a. Previous analytical results,
 - b. The proximity of the CWS or NTNCWS to a potential point or nonpoint source of contamination. A point source of contamination includes a spill or leak of a chemical at or near a water treatment plant or distribution system pipeline, at a manufacturing, distribution or storage facility, or from a hazardous or municipal waste landfill or other waste handling or treatment facility,
 - c. The environmental persistence and transport of the VOC,
 - d. The number of persons served by the CWS or NTNCWS and the proximity of a smaller system to a larger system, and
 - e. How well the water source is protected against contamination. The Department shall consider factors such as the depth of the well, the type of soil, and wellhead protection for a groundwater system and watershed protection for a surface water system.
 - 3. As a condition of a monitoring waiver for a groundwater sampling point, a CWS or NTNCWS shall take 1 sample at the groundwater sampling point during the time the waiver is effective (that is, 1 sample every 6 years). A CWS or NTNCWS shall update its vulnerability assessment during the term of the waiver, considering the factors listed in subsection (K)(2). The Department may renew a waiver based upon an updated vulnerability assessment provided the assessment reconfirms that the CWS or NTNCWS is not vulnerable to VOC contamination. If the Department does not reconfirm non-vulnerability within 3 years of the initial determination,

the waiver automatically terminates and the CWS or NTNCWS shall sample annually at the groundwater sampling point in the next compliance period.

- 4. A CWS or NTNCWS that receives a monitoring waiver for a surface water sampling point shall sample at the frequency specified by the Department (if any). A CWS or NTNCWS shall update its vulnerability assessment during each compliance period. The Department may update a public water system's vulnerability assessment for a CWS or NTNCWS that is subject to the monitoring assistance program. The Department may renew a waiver based upon an updated vulnerability assessment provided the assessment reconfirms that the CWS or NTNCWS is not vulnerable to VOC contamination. If the Department does not reconfirm nonvulnerability, the waiver automatically terminates and a CWS or NTNCWS shall sample annually at the surface water sampling point in the next compliance period.

R18-4-216. Synthetic Organic Chemicals; Monitoring Requirements

- A. Each A CWS and, NTNCWS, or the contractor on behalf of a CWS or NTNCWS, shall monitor to determine compliance with the MCLs for the SOC listed in R18-4-215. A TNCWS is not required to conduct monitoring for SOC.
- B. A CWS, or NTNCWS, or the contractor on behalf of a CWS or NTNCWS, shall conduct initial monitoring for SOC in the monitoring year designated by the Department within the initial compliance period.
- C. Each A CWS, or NTNCWS, or the contractor on behalf of a CWS or NTNCWS, shall monitor for SOC at each sampling point as prescribed in R18-4-218.
- D. A water supplier A CWS, or NTNCWS, or the contractor on behalf of a CWS or NTNCWS, may composite SOC samples as prescribed in R18-4-219.
- E. Each A CWS, or NTNCWS, or the contractor on behalf of a CWS or NTNCWS, shall take 4 consecutive quarterly samples at each sampling point during each compliance period. If no synthetic organic chemicals are detected at a sampling point during the initial compliance period, then the Department may reduce monitoring frequency in repeat compliance periods pursuant to subsection (G) below. The Department's decision to reduce monitoring frequency shall be in writing.
- F. No change
- G. No change
- H. No change
- I. NO change
- J. No change
- K. No change
- L. No change
- M. A CWS or NTNCWS may submit a written request to the Department for a waiver from the monitoring requirements for a SOC. The Department may initiate a waiver for a CWS or NTNCWS. A monitoring waiver is effective for 1 compliance period. The Department's decision to grant a monitoring waiver shall be in writing. A CWS or NTNCWS shall reapply for a monitoring waiver in each subsequent compliance period. A CWS or NTNCWS that receives a monitoring waiver is not required to monitor for the SOC during the term of the waiver. The Department may grant a monitoring waiver as follows:
 - 1. Use waivers: The Department may grant a use waiver if the Department determines that there has been no previous use of the SOC (including transport, storage, or disposal) within the watershed or zone of influence of a well. If previous use of the SOC is unknown or if the

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SOC has been used previously, the Department may grant a susceptibility waiver based upon a vulnerability assessment.

2. Susceptibility waiver: The Department may grant a susceptibility waiver based upon the results of a vulnerability assessment. The Department shall consider the following factors in deciding whether to grant or deny a susceptibility waiver:
 - a. Previous analytical results,
 - b. The proximity of the CWS or NTNCWS to a potential point source or nonpoint source of contamination. A point source of contamination includes a spill or leak of a SOC at or near a water treatment plant or distribution system pipeline, or at a manufacturing, distribution, or storage facility, or from a hazardous or municipal waste landfill, or from another waste handling or treatment facility. A nonpoint source includes the use of pesticides to control insect and weed pests on an agricultural area, forest, home, garden, or other land application use,
 - c. The environmental persistence and transport of the SOC,
 - d. How well the water source is protected against contamination by the SOC due to such factors as geology and well design (for example, depth to groundwater, type of soil and the integrity of the well casing),
 - e. Elevated nitrate levels at the water supply source,
 - f. Use of PCBs in equipment used in the production, storage, or distribution of water, and
 - g. Wellhead protection assessments.

N. No change

R18-4-219. Sample compositing

- A. No change
- B. No change
- C. A public water system may composite up to 5 samples from sampling sites within the same public water system. A public water system serving 3,300 or fewer persons may composite samples with samples taken from other public water systems serving 3,300 or fewer persons. The contractor may composite samples for a CWS or NTNCWS that is subject to the monitoring assistance program as prescribed in this Section.
- D. No change
- E. No change

R18-4-224. The Monitoring Assistance Program

- A. A public water system that serves 10,000 or fewer persons shall participate in the monitoring assistance program. Within 60 days of receiving notice of participation in the monitoring assistance program, a public water system that determines that it serves more than 10,000 persons shall substantiate its determination by submitting that portion of the most recent census provided by the Arizona Department of Economic Security, Research Administration, Population Statistics Unit that supports the public water system's determination. By October 1 of each year, the public water system shall report the population it served as of June 30 of that year.
- B. A public water system that serves more than 10,000 persons may participate in the monitoring assistance program for a minimum of 3 years, based upon its compliance period. The public water system shall notify the Department in writing of its intention to participate in the monitoring assistance program at least 1 year in advance of its assigned monitoring year, unless its assigned monitoring year is 1999. Subject to

payment of required fees, the public water system's participation shall begin at the start of its assigned monitoring year.

- D. Under the monitoring assistance program, the contractor shall conduct monitoring for all inorganic chemicals listed in R18-4-206, R18-4-401, and R18-4-402 except nitrate, nitrite, and asbestos; all VOCs listed in R18-4-211 and R18-4-404, and all SOCs listed in R18-4-215 and R18-4-405.
- E. A public water system shall retain responsibility for compliance with the public notice requirements of R18-4-105.
- F. A public water system shall notify the Department, by October 1 of each year of any change in ownership and mailing address. The PWS shall notify the Department of the name of the person to whom billing is to be addressed, or number of meters or service connections of each size that the public water system had on June 30 that year.

R18-4-225. Fees for the Monitoring Assistance Program

- A. A public water system that serves 10,000 or fewer persons shall be billed annually by the Department and shall pay fees to the Department for its costs under the monitoring assistance program.
- B. In 1999, a PWS with 100 service connections shall pay an annual unit fee of \$3.50. In years 2000 and 2001, the PWS shall pay an annual unit fee of \$3.50 adjusted on January 1 to reflect the weighted percentage increase, if any, in the contract costs as of the close of the 12 month period ending on December 31, of that year.
- C. In 1999, a public water system with fewer than 100 service connections shall pay an annual fee of \$350. In years 2000 and 2001, the PWS shall pay an annual fee of \$350 adjusted on January 1 to reflect the weighted percentage increase, if any, in the contract costs as of the close of the 12 month period ending on December 31, of that year.

Table A

Meter Size	Gallon Per Minute (GPM)	Meter Weight
≤3/4"	30	1.00
1"	50	1.67
1½"	100	3.33
2"	160	5.33
3"	300	10.00
4"	500	16.67
6"	1000	33.33
≥8"	1600	53.33

- D. The Department shall calculate a total fee to the public water system as follows:
 1. Multiply the meter weight by the number of meters or service connections of each size that were capable of providing water as of June 30, preceding the billing date;
 2. Add the results for each category; and
 3. Multiply the result in paragraph 2 by the unit fee.
- E. A public water system that serves more than 10,000 persons and that chooses to participate in the monitoring assistance program shall participate for the entire compliance period and shall pay fees in accordance with R18-4-225.

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OR

R18-4-225. Fees for the Monitoring Assistance Program

- A. A public water system that serves 10,000 or fewer persons shall pay fees annually to the Department for its costs under the monitoring assistance program.
- B. In 1999, a PWS with 100 service connections shall pay an annual unit fee of \$3.50. In years 2000 and 2001, the PWS shall pay an annual unit fee of \$3.50 adjusted on January 1 to reflect the weighted percentage increase, if any, in the contract costs as of the close of the 12 month period ending on December 31, of that year.
- C. In 1999, a PWS with fewer than 100 service connections shall pay an annual unit fee of \$3.50. In years 2000 and 2001, the PWS shall pay an annual unit fee of \$3.50 adjusted on January 1 to reflect the weighted increase, if any, in the contract costs as of the close of the 12 month period ending on December 31, of that year.

Table A

<u>Meter Size</u>	<u>Gallon Per Minute (GPM)</u>	<u>Meter Weight</u>
<u>≤3/4"</u>	<u>30</u>	<u>1.00</u>
<u>1"</u>	<u>50</u>	<u>1.67</u>
<u>1½"</u>	<u>100</u>	<u>3.33</u>
<u>2"</u>	<u>160</u>	<u>5.33</u>
<u>3"</u>	<u>300</u>	<u>10.00</u>
<u>4"</u>	<u>500</u>	<u>16.67</u>
<u>6"</u>	<u>1000</u>	<u>33.33</u>
<u>≥8"</u>	<u>1600</u>	<u>53.33</u>

- D. The Department shall calculate a total fee to the public water system as follows:
1. Multiply the meter weight by the number of meters or service connections of each size that were capable of providing water as of June 30, preceding the billing date;
 2. Add the results for each category; and
 3. Multiply the result in paragraph 2 by the unit fee.
- E. A public water system that serves more than 10,000 persons and that chooses to participate in the monitoring assistance program shall participate for the entire compliance period and shall pay fees in accordance with R18-4-225.

R18-4-226. Collection and Payment of Fees

- A. A public water system shall forward fees for the monitoring assistance program to the Department in accordance with A.R.S. § 49-360(F).
- B. The Department shall mail an invoice for the fees to the public water system annually. The public water system shall pay the invoiced amount to the Department, at the address listed on the invoice, by the indicated due date.
- C. The Department may make refunds or billing corrections for a public water system that can demonstrate an overpayment, or error in the amount, or number, or size of meters billed. The public water system shall send a written request for a refund or correction to the Department, at the address on the invoice, within 90 days of the invoice date.

- D. The Department may verify the number and size of meters, or if unmetered, the number of service connections.
- E. The Department shall not waive program fees.
- G. A PWS that fails to pay fees required shall be subject penalties in accordance with of A.R.S. § 49-354.

ARTICLE 4. SPECIAL MONITORING REQUIREMENTS

R18-4-401. Special Monitoring Requirements for Sulfate

- A. All community water systems [CWS] and nontransient, non-community water system [NTNCWS] shall conduct monitoring for sulfate. Each CWS, NTNCWS, or the contractor on behalf of a CWS or NTNCWS, shall monitor for sulfate.
- B. Monitoring for sulfate shall be conducted. Each CWS, NTNCWS, or the contractor on behalf of a CWS or NTNCWS, shall take 1 sample for sulfate at each sampling point as prescribed in R18-4-218.
- C. Each CWS or NTNCWS shall take one sample at each sampling point for sulfate before December 31, 1995. Monitoring for sulfate shall be repeated once every five years. Each CWS, NTNCWS, or the contractor on behalf of a CWS or NTNCWS, shall monitor for sulfate once every 5 years.
- D. A CWS or NTNCWS may apply for a waiver from sulfate monitoring requirements. The Department may initiate a waiver for a CWS or NTNCWS. The Department may waive sulfate monitoring requirements for sulfate at a sampling point if previous analytical results are available which that indicate that the concentration of sulfate does not exceed 250 mg/L, provided the monitoring data was collected after January 1, 1990. The Department's decision to waive sulfate monitoring requirements shall be in writing.
- E. The Department may require a confirmation sample.
- F. A CWS or NTNCWS. A CWS, NTNCWS, or the contractor on behalf of a CWS or NTNCWS, may composite sulfate samples as prescribed in R18-4-219.

R18-4-402. Special Monitoring for Sodium

- A. A CWS, or the contractor on behalf of a CWS, shall conduct monitoring for sodium.
- B. Each CWS, or the contractor on behalf of a CWS, shall collect 1 sample per water treatment plant. Multiple wells drawing raw water from a single aquifer may, with Department approval, be considered 1 treatment plant for purposes of determining the minimum number of sodium samples required.
- C. Each CWS, or the contractor on behalf of the CWS, shall collect and analyze 1 sample annually for each water treatment plant utilizing a surface water source, in whole or in part. A CWS shall collect and analyze 1 sample every 3 years for each water treatment plant utilizing only groundwater sources. The Department may require a water supplier to collect and analyze water samples more frequently in locations where the sodium content is variable.

R18-4-404. Special Monitoring for Unregulated Volatile Organic Chemicals

- A. Each community water system [CWS] and nontransient, non-community water system [NTNCWS] shall monitor for unregulated volatile organic chemicals for which maximum contaminant levels have not been established. CWS, NTNCWS, or the contractor on behalf of the CWS or NTNCWS, shall monitor for the unregulated VOCs listed in this subsection.
1. Bromobenzene
 2. Bromodichloromethane
 3. Bromoform
 4. Bromomethane

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5. Chlorodibromomethane
 6. Chloroethane
 7. Chloroform
 8. Chlormethane
 9. o-Chlorotoluene
 10. p-Chlorotoluene
 11. Dibromomethane
 12. m-Dichlorobenzene
 13. 1,1-Dichloroethane
 14. 1,3-Dichloropropane
 15. 2,2-Dichloropropane
 16. 1,1-Dichloropropene
 17. 1,3-Dichloropropene
 18. 1,1,1,2-Tetrachloroethane
 19. 1,1,2,2-Tetrachloroethane
 20. 1,2,3-Trichloropropane
- B. ~~A CWS or NTNCWS~~ CWS, NTNCWS, or the contractor on behalf of the CWS, shall ~~conduct monitoring monitor~~ for unregulated ~~volatile organic chemicals~~ VOCs at sampling points as prescribed in R18-4-218.
- C. ~~Each CWS and NTNCWS~~ A CWS, NTNCWS, or the contractor on behalf of the CWS, shall take ~~four 4~~ consecutive quarterly samples at each surface water sampling point for each unregulated ~~volatile organic chemical~~ VOC listed in this Section. ~~Each CWS and NTNCWS~~ A CWS, NTNCWS, or the contractor on behalf of the CWS, shall take ~~one 1~~ sample at each groundwater sampling point for each unregulated ~~volatile organic chemical~~ VOC listed in this Section. ~~Each CWS and NTNCWS~~ shall conduct repeat monitoring. A CWS, NTNCWS, or the contractor on behalf of the CWS, shall monitor for unregulated ~~volatile organic chemicals~~ VOCs at least once every ~~five 5~~ years.
- D. A CWS or NTNCWS may use monitoring data collected ~~any time after January 1, 1983 prior to the initial monitoring year~~ to meet the initial monitoring requirements for unregulated ~~volatile organic chemicals~~ VOCs listed in this Section provided the monitoring data was collected after January 1, 1983.
- E. ~~A CWS or NTNCWS~~ A CWS, NTNCWS, or the contractor on behalf of the CWS, may composite samples for the unregulated ~~volatile organic chemicals~~ VOCs listed in this Section as prescribed in R18-4-219.
- F. A CWS or NTNCWS may apply for a waiver from the monitoring requirements for the unregulated ~~volatile organic chemicals~~ VOCs listed in this Section. The Department may grant a waiver based upon the criteria specified in R18-4-212(L). The Department may initiate a waiver for a CWS or NTNCWS.
- G. A water supplier shall notify persons served by the public water system of the availability of the monitoring results for unregulated ~~volatile organic chemicals~~ VOCs listed in this Section by including a notice in the 1st set of water bills issued by the public water system after receipt of the monitoring results or by direct mail within ~~three 3~~ months of receipt of the monitoring results. The notice shall identify a contact person and supply a telephone number ~~which that~~ may be called for more information on the monitoring results. For surface water systems, public notification is required only after the 1st quarter's monitoring results and ~~the~~ The notice shall include a statement that additional monitoring for unregulated ~~volatile organic chemicals~~ VOCs will shall be conducted for ~~three 3~~ more quarters ~~with and~~ the monitoring results are available upon request.

R18-4-405. Special Monitoring for Unregulated Synthetic Organic Chemicals

- A. ~~Each community water system and nontransient, noncommunity water system shall conduct monitoring for the following unregulated synthetic organic chemicals for which maximum contaminant levels have not been established: Each CWS, NTNCWS, or the contractor on behalf of the CWS, shall monitor for the unregulated SOC listed in this Section.~~
1. Aldicarb
 2. Aldicarb sulfone
 3. Aldicarb sulfoxide
 4. Aldrin
 5. Butachlor
 6. Carbaryl
 7. Dicamba
 8. Dieldrin
 9. 3-Hydroxycarbofuran
 10. Methomyl
 11. Metolachlor
 12. Metribuzin
 13. Propachlor
- B. ~~Each CWS or NTNCWS shall conduct monitoring~~ A CWS, NTNCWS, or the contractor on behalf of the CWS or NTNCWS, shall monitor for the unregulated ~~synthetic organic chemicals~~ SOCs listed in this Section at sampling points as prescribed in R18-4-218.
- C. ~~Each CWS and NTNCWS~~ A CWS, NTNCWS, or the contractor on behalf of the CWS or NTNCWS, shall take ~~four 4~~ consecutive quarterly samples at each sampling point for each unregulated ~~synthetic organic chemical~~ SOC listed in this Section. Each CWS and NTNCWS shall complete initial monitoring for the unregulated ~~synthetic organic chemicals~~ SOCs listed in this Section and report the analytical results to the Department by December 31, 1995. ~~Each CWS and NTNCWS shall conduct repeat monitoring for the unregulated synthetic organic chemicals listed in this Section at least once every five years~~ A CWS, NTNCWS, or the contractor on behalf of the CWS or NTNCWS, shall monitor for unregulated SOCs at least once every 5 years.
- D. ~~A CWS or NTNCWS~~ CWS, NTNCWS, or the contractor on behalf of the CWS, may composite samples for the unregulated ~~synthetic organic chemicals~~ SOCs listed in this Section as prescribed in R18-4-219.
- E. ~~Each~~ A CWS and NTNCWS may submit a written request to the Department for a waiver from the monitoring requirements for unregulated ~~synthetic organic chemicals~~ SOCs listed in this Section. ~~Use waivers and susceptibility waivers for unregulated synthetic organic chemicals listed in this Section may be granted~~ The Department, under the monitoring assistance program, may grant a use waiver or a susceptibility waiver for an unregulated SOC based upon the waiver criteria specified in R18-4-216(M). The Department under the monitoring assistance program, may initiate a waiver to a CWS or NTNCWS.
- F. ~~Instead of performing the monitoring required by this Section, a CWS or NTNCWS serving fewer than 150 service connections may send a letter to the Department stating that the CWS or NTNCWS is available for sampling. This letter must be sent to the Department by January 1, 1994. The CWS or NTNCWS shall not send such samples to the Department unless requested to do so.~~